

REMARKS

This Amendment responds to the Office Action mailed February 5, 2010 in the above-identified application. Based on the foregoing amendments, allowance of the application is respectfully requested.

Claims 23 and 27-36 are currently under consideration. Claims 1-22 and 24-26 have been withdrawn from consideration. By this Amendment, claim 23 has been amended. The amendment finds clear support in the original application at least at page 2, second paragraph. No new matter has been added.

The Examiner's courtesy in conducting a further telephone interview with Applicant's attorney on March 25, 2010 is acknowledged with appreciation. During the telephone interview, the current Office Action was discussed. In particular, the phrase "tensile stress" was discussed, and the Examiner questioned whether the current claims distinguished over Duecker (US 5,927,582), not previously of record in the application. A proposed amendment was subsequently sent to the Examiner for comment. The Examiner indicated that the proposed amendment, which corresponds to the current amendment to claim 23, distinguished over Fernandez and Duecker.

The Duecker patent was discussed during the telephone interview, but was not previously of record in the application. The Examiner is respectfully requested to make Duecker of record in the application.

The Examiner has rejected claims 23 and 27-36 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner asserts that the phrase "tensile stress" is not correct. Applicants do not agree. Nonetheless, in order to advance prosecution of the application, the phrase "tensile stress" has been amended to "alternating stress" in claim 23. Accordingly, withdrawal of the rejection is respectfully requested.

The Examiner has rejected claims 23 and 27-36 under 35 U.S.C. §103(a) as unpatentable over Fernandez (US 5,865,358) in view of Gold (US 3,086,365). The rejection is respectfully traversed for the following reasons.

Fernandez discloses a breaker machine designed to separate a bundle of sheets, such as paperboard, in two, arcuate and progressively severing motions in the plane of the workpiece. With reference to Figs. 4B, 4C and 5 of Fernandez, members 40A and 44A are moved in the arcuate motion shown by arrow B in Fig. 4B about fixed pivot point X. Then, members 40A and 44A are moved in the arcuate, progressively severing motion shown by arrow C in Fig. 4C about pivot point Y (col. 5, lines 6-26). Thus, Fernandez discloses two movements in the plane of product portions 30A and 30B.

Accordingly, Fernandez does not disclose or suggest a drive moving, in operation, the movably mounted second pair of jaws *periodically up and down with respect to said upper side and said under side of the disk-shaped or plate-shaped production part, as defined in an unstressed state, in such a way that the production part, along the fracture plane, is subjected to an alternating stress on said upper side and said under side*, as required by amended claim 23. The Examiner acknowledged that amended claim 23 is patentably distinguished over Figs. 4A-4D and 5 of Fernandez.

Fig. 2 of Fernandez shows a method of breaking adjacent portions of stacked articulated sheets wherein clamps 22A and 22B are deflected downwardly to perform a break between adjacent stacks of product portions (col. 2, lines 33-43). Duecker shows an arrangement wherein clamps engage stacked corrugated board and one of the clamps is pivoted upwardly to separate first and second portions of stacked board (col. 4, lines 33-42). However, neither Fig. 2 of Fernandez nor Duecker discloses or suggests moving the movably mounted second pair of jaws *periodically up and down with respect to said upper side and said under side of the disk-shaped or plate-shaped production part, as defined in an unstressed state, in such a way that the production part, along the fracture plane, is subjected to an alternating stress on said upper side and said under side*, as required by amended claim 23. As noted in the previous response, Fernandez teaches away from the arrangement of Fig. 2 and urges the reader to implement horizontal movement as described in connection with Figs. 4A-4D and 5.

Gold is cited for disclosing a hydraulic actuation system but contains no teaching of a workpiece cracking device. Accordingly, Gold does not contain the teachings that are lacking in Fernandez.

For at least these reasons, amended claim 23 is clearly and patentably distinguished over Fernandez in view of Gold. Claims 27-36 depend from claim 23 and are patentable over Fernandez in view of Gold for at least the same reasons as claim 23. As discussed above, claims 23 and 27-36 are also distinguished over Duecker.

Based upon the above discussion, claims 23 and 27-36 are in condition for allowance.

CONCLUSION

In view of the above amendment, Applicant believes the pending application is in condition for allowance. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. H0075.70107US00 from which the undersigned is authorized to draw.

Dated: May 3, 2010

Respectfully submitted,

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